

DOMESTIC  
VIOLENCE  
VICTORIA

Joint Select Committee on Australia's  
Family Law System

Submission

January 2020

## About Domestic Violence Victoria

Domestic Violence Victoria (DV Vic) is the peak body for specialist family violence response services for victims-survivors in Victoria. As such, DV Vic is recognised as the statewide voice of Specialist Family Violence Services (SFVS) responding to victims-survivors. DV Vic is a membership-based organisation and is accountable to its members, who also comprise its Board of Governance. DV Vic's core membership comprises statewide and regional specialist agencies working with victims-survivors of family violence across Victoria. We are an independent, non-government organisation that leads, organises, advocates for, and acts on behalf of its members utilising an intersectional feminist approach. However, the organisation is ultimately accountable to victims-survivors of family violence and works in their best interests.

DV Vic's work is focused on advocating for, supporting, and building the capacity of specialist family violence practice and service delivery for victims-survivors; system reform; and research, policy development and law reform. DV Vic analyses the views and experiences of member organisations, the evidence on family violence, and the lived experience of victims-survivors, and translates this into innovative and contemporary policy, practice, and advocacy.

DV Vic holds a central position in the Victorian family violence system and its strategic governance and is one of the key agencies with responsibility for providing family violence subject matter expertise, technical assistance, capacity building, and policy and practice advice to the SFVS sector, broader sectors, government, and other partners and stakeholders.

## Acknowledgements

### Acknowledgement of Aboriginal and Torres Strait Islander Peoples

Domestic Violence Victoria acknowledges Aboriginal and Torres Strait Islander Peoples as Australia's First Nations and Traditional Owners of Country. We pay respects to Elders past, present and emerging. We acknowledge that sovereignty was never ceded and recognise the right to self-determination and continuing connection to land, waters and culture. We recognise the resistance, survival and leadership of Aboriginal communities in preventing and responding to family violence in Victoria and across Australia.

### Acknowledgement of Victims and Survivors

Domestic Violence Victoria acknowledges the strength and resilience of adults, children and young people who have experienced family violence and recognise that it is essential that responses to family violence are informed by their experiences and advocacy. We pay respects to those who did not survive and acknowledge friends and family members who have lost loved ones to this preventable and far-reaching issue. We acknowledge the victim survivors who have come forward in previous inquiries into the family law system and their bravery, in speaking the unspeakable and giving voice to those who can no longer speak.

As the quote below demonstrates, women's experience of the family law system become part of her experience of family violence.

*Since separating from my husband, I live in a constant state of uncertainty while I wait for formal parenting arrangements to be put in place. As I seek help and advice to put these in place I am constantly met with delay and apparent lack of concern and acknowledgement of what the kids and I have been through.*

*Fear is always with me - fear that when the children are with me I will say or do something that will 'look bad' in the eyes of the family court and fear that in a few days' time I will have to hand my children over to someone who has hurt us all for so many years. As the day to handover the kids draws near, the anxiety and fear grows for all of us, and once he has them I am continually worried, concerned and fearful of what they might be seeing, hearing and experiencing and whether they will be returned to me. I am fearful that I have to keep seeing him even though it is the last thing I want to do, and that each time the kids come back to me I feel like I have to rebuild my relationship with them and make them feel safe all over again.*

*As a Mum it is debilitating and heartbreaking to feel so helpless and to not be able to protect your own children. I find myself thinking that maybe I should have stayed and endured the daily abuse as at least I would have been there to protect the kids. I have traded one powerless situation for another. But I know that I left for their safety and wellbeing and that I will not return despite how hard it is and how long it might take.*

*A system that makes me consider returning to a violent situation and that causes so much fear and hopelessness is unjust and must change. To not do so places my kids, and any other children that find themselves in the same situation through no fault of their own, in harm's way. It does not protect them, it does not support them, it does not keep them safe. We must do better, and we must do so quickly.*

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## Terms and language used

### Family Violence

DV Vic recognises family violence as any behaviour that occurs in family, domestic or intimate relationships that is physically or sexually abusive; emotionally or psychologically abusive; economically abusive; threatening or coercive; or is in any other way controlling that causes a person to live in fear for their safety or wellbeing or that of another person. In relation to children, family violence is also defined as behaviour by any person that causes a child to hear or witness or otherwise be exposed to the effects of the above behaviour. This definition includes violence within a broader family context, such as extended families, kinship networks and communities.<sup>1</sup>

Further, we recognise that the legal system may be used by perpetrators to maintain and reassert power and control over the victim before, during or after separation. This ‘systems abuse’ may involve making multiple applications in various legal jurisdiction and is used by perpetrators of domestic and family violence to ‘reassert their power and control over the victim’<sup>2</sup> (discussed in more detail below).

As the most common form of family violence<sup>3</sup>, this submission predominantly focuses on intimate partner violence perpetrated by men against women and children. However, DV Vic knows that family violence occurs across all cultures and backgrounds and is an abuse of power and control that can be perpetrated by anyone in a range of intimate, family or family-like relationships.

We urge the Commission to carefully consider responses and practices that extend beyond intimate partner violence to ensure that the family law system is responsive to a diverse and contemporary range of family structures.

### Victim-Survivor and Perpetrator

In accordance with the gendered nature of family violence<sup>4</sup>, particularly in the context of intimate partner violence, the term **victim-survivor** has been used throughout this submission to refer to women and children who experience family violence. However, DV Vic acknowledges that family violence impacts people across a diversity of gender identities, social and cultural contexts.

The term **victim-survivor** acknowledges that the person subjected to family violence is both a victim of a crime and a human rights violation, and they are also a survivor with respect to their autonomy, strength and resilience. The term must not be used to wholly define a person. Experiencing family violence is a part of someone’s life amongst many other experiences. Some people may prefer the term ‘person experiencing (or has experienced) family violence’. Some people may prefer other terms or may not prefer any particular label or term at all.

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<sup>1</sup> See Family Violence Protection Act 2008 (Vic) s.5.

<sup>2</sup> The Australian Institute of Judicial Administration. 2019. *National Domestic and Family Violence Benchbook*. Retrieved 6 January 2019 <<https://dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/systems-abuse/>>

<sup>3</sup> Australian Institute of Health and Welfare. 2018. *Family, domestic and sexual violence in Australia 2018*. Cat. no. FDV 2. Canberra: AIHW. p.ix; State of Victoria. 2016. *Royal Commission into Family Violence: Report and Recommendations*, Vol. 1. Parl Paper No. 132 (2014-16), p17.

<sup>4</sup> Australian Bureau of Statistics (ABS). 2017. *Personal Safety Survey. Australia: user guide. 2016*. 4906.0.55.003. Canberra: ABS; Australian Institute of Health and Welfare. 2019. *Family, domestic and sexual violence in Australia: continuing the national story 2019*. Cat. No. FDV 3. Canberra: AIHW; State of Victoria. 2016. Vol 1. op. cit. p17.

DV Vic recognises that **children are victims in their own right**, can experience family violence directly or indirectly, and that family law processes and decisions that expose children to a perpetrator of family violence even if the violence has not been directly perpetrated against them, can have devastating impacts for children and their welfare.

The term **perpetrator** has been used to refer to adult men who use violence in the context of family or family like relationships.

## List of Acronyms

AIFS	Australian Institute of Family Studies
ALRC	Australian Law Reform Commission
AWAVA	Australian Women Against Violence Alliance
CALD	People who are from culturally and linguistically diverse backgrounds
CCS	Children's Contact Services
CSMC	Council for Single Mothers and their Children
DV Vic	Domestic Violence Victoria
JCCD	Judicial Council on Cultural Diversity
LAFDR	Legally-Assisted Family Dispute Resolution
LGBTIQ	People who are lesbian, gay, bisexual, transgender, intersex or queer
MARAM	Multi-Agency Risk Assessment and Management Framework (VIC)
NCSMC	National Council for Single Mothers and their Children
NRAP	National Risk Assessment Principles
SFVS	Specialist Family Violence Services
SPLA	Standing Committee on Policy and Legal Affairs
VAW	Violence against women
WLSA	Women's Legal Service Australia
WLSV	Women's Legal Service Victoria

## Executive Summary

DV Vic's submission to the Inquiry is grounded in the understanding that significant and holistic change is required to ensure that the family law system is responsive to victim-survivors of family violence in a way that prioritises their safety. Whilst this submission addresses the matters set out in the *Terms of Reference*, we contend that for reforms to be effective and produce fair, just and safe outcomes for victim-survivors, a holistic approach is required to ensure the **whole justice system** responds in a coordinated and complementary way to the complex matters brought before it. However, we recognise that significant and holistic change will take considerable time and the chronically underfunded family law system<sup>5</sup> requires an **immediate increase in resourcing, funding and investment** to allow short term, immediate solutions to be implemented as victim-survivors of family violence cannot afford to wait for long-term whole of system reforms to happen.

Given the prevalence of family violence as an issue in family law proceedings, we believe that a **family violence lens** must be applied across the family law system and processes, decisions and reforms must be underpinned by a **shared understanding of family violence risk**. Such an approach would rely on **mandatory training for all family law professionals** (including family report writers and children's contact services) to ensure they have a comprehensive and contemporary understanding of family violence. This would promote **greater consistency** in decision-making across state and federal jurisdictions and **reduce fragmented and siloed responses** that place 'already vulnerable parents and children at further risk'<sup>6</sup>.

The complexity of matters before the courts, demand reforms that **strengthen and increase family violence specialisation** and promote cross-jurisdictional collaborative and integrated responses. Such approaches would be supported by **safe and appropriate sharing of risk relevant information** and the introduction of family violence and trauma informed **holistic case management services** to ensure psychosocial and legal needs of all parties are identified and supported.

We support models that promote the **early determination of family violence** as this would provide a mechanism for the court to test evidence of family violence early and where family violence is identified, put risk management and mitigation processes put in place. Such models would be supported by family violence and trauma informed case management processes which incorporate legal professionals and specialist family violence practitioners working collaboratively to provide a holistic response to victim-survivors.

We believe reforms that lend themselves to a fully resourced '**one family one court**' approach have potential to close '**jurisdictional gaps**' which will reduce the onus on victim-survivors to have to retell their stories and would ensure court professionals are able to fully inform themselves about existing

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<sup>5</sup> Australian Law Reform Commission. 2019. *Family Law for the Future – An Inquiry into the Family Law System Final Report* (March 2019). p32: "there is a chronic lack of funding for the appointment and proper training of judicial resources (including judges, judicial registrars – none of whom are currently employed within the courts, and registrars), court-based social services professionals (including Family Consultants and Indigenous Liaison Officers), and legal aid services (including Independent Children's Lawyers)".  
<[https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc\\_report\\_135.pdf](https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_report_135.pdf)>

<sup>6</sup> Francia, L. Milllear, P, Sharman, R. 2019. *Addressing family violence post separation – mothers and fathers' experiences from Australia*. Journal of Child Custody.



risk and safety concerns. Such reforms would be reliant on a shared understanding of family violence risk and access to **fully funded** and resourced legal and specialist family violence services for all parties.

Participating in the family law system is prohibitively expensive for victim-survivors and women affected by family violence are considerably disadvantaged in family law property matters. We believe that **cost cannot be a barrier to accessing a justice response** and legal proceedings must not contribute to or exacerbate financial insecurity of victim-survivors. Access to free legal advice **and** representation is critically important to ensure victim-survivors are not further disadvantaged in complex family law proceedings.

In the long-term, we support exploration of inquisitorial models that can overcome the limitations of the current adversarial system and in the short term, we support the **expansion of Legally Assisted Family Dispute Resolution** underpinned by the same principles as the broader family law system which place the safety of women and children as the highest priority.

We reiterate our support of AWAVA's position<sup>7</sup> that urgent reform is necessary to make family law safe for victim-survivors of domestic and family violence. This includes:

- Making sure courts identify safety risks that should be considered in any court decision, by implementing consistent screening and risk assessment process to protect children and parents at risk of violence;
- Ensuring the courts have access to all relevant information by establishing a national information sharing framework to ensure information from state jurisdictions can be considered where relevant, and the courts are supported to make informed decisions that prioritise child safety and wellbeing;
- Ensuring victim-survivors of family violence are supported and don't have to go through the court process alone – by providing social and legal supports for all parties to family law matters involving family violence or child abuse;
- Prioritising matters where people are at high-risk – by creating a specialist case management stream for family violence matters involving children and parents at serious risk of harm, and
- Requiring those who influence court proceedings to have competency in identifying and responding to domestic and family violence in diverse family contexts – by implementing an accreditation framework for all court officials and family law practitioners and professionals, starting with court report writers and supervised contact centre workers.

We also reaffirm our support for Women's Legal Services Australia (WLSA's) *Safety First in Family Law Plan* which sets out five changes that need to happen now to make the family law system safer:

1. Strengthen family violence response in the family law system
2. Provide effective legal help for the most disadvantaged
3. Ensure family law professionals have real understanding of family violence
4. Increase access to safe dispute resolution models
5. Overcome the gaps between the family law, family violence and child protection systems<sup>8</sup>.

<sup>7</sup> AWAVA. 2019. *Joint Statement – Make family law safe: stop putting victim-survivors of family violence and child abuse in harm's way*. Retrieved 29 January 2020. <[https://awava.org.au/2019/10/18/media-release/joint-statement-make-family-law-safe?doing\\_wp\\_cron=1580353998.1751849651336669921875](https://awava.org.au/2019/10/18/media-release/joint-statement-make-family-law-safe?doing_wp_cron=1580353998.1751849651336669921875)>

<sup>8</sup> Women's Legal Services Australia. 2019. *Safety First in Family Law Plan*. Retrieved January 2020 <[http://www.wlsa.org.au/uploads/campaign-resources/Safety\\_First\\_in\\_Family\\_Law\\_Plan.pdf](http://www.wlsa.org.au/uploads/campaign-resources/Safety_First_in_Family_Law_Plan.pdf)>.

## Introduction

Numerous inquiries have been held into the family law system and “the intersection between family violence and family law”<sup>9</sup>. We submit that these inquiries provide the Government with an extensive analysis of what is problematic within the current family law system, and proposed solutions, to form the basis of immediate reform. Given the amount of existing evidence, we continue to question the necessity of this Inquiry,<sup>10</sup> but are reluctantly engaging in the Inquiry to ensure that it is informed by the voices of victim-survivors and the organisations that support them. We submit that change to a system that is widely acknowledged as needing immediate reform to ensure the safety of victim-survivors and their children, cannot be delayed awaiting the outcome of this Inquiry when proposed solutions have already been developed.

This submission will not repeat or re-examine the existing evidence-base or make any new recommendations, as we believe there are enough existing recommendations yet to be fully considered by Government, that can form the basis of future reforms. However, we will highlight existing evidence that points to priority areas for DV Vic members as they signal reform of the family law system which can have most impact for victim-survivors of family violence in the short, medium and long-term.

Of the 12 major reports produced on the operation of the family law system since 2009, this submission will focus on reports produced by the Australian Law Reform Commission: *Family Law for the Future – An Inquiry into the Family Law System Final Report* (the ‘ALRC review’), House of Representatives Standing Committee on Social Policy and Legal Affairs: *A better family law system to support and protect those affected by family violence* (the ‘SPLA report’); and the Victorian Family Violence Royal Commission report as these provide in-depth analysis of the intersection between family violence and the family law system.

We trust the Committee will take into consideration and build on previous reports and not reinterrogate established evidence and knowledge that was produced through these comprehensive processes. To do so may call into question the integrity of previous inquiries and signal to victim survivors who participated that their contribution is not valued or believed. As noted by Judith Herman<sup>11</sup>,

*When women resist the pressure to remain silent about abuse, the response that they receive to their disclosure is vital to their recovery and to their future help seeking: **belief, validation, and support are crucial.***

In this regard, we urge the Committee to consider all the victim-submitted evidence to the ALRC review including the contributions made by 732 individuals in response to the *Tell us your story project*<sup>12</sup> and evidence submitted as part of the other inquiries that have been conducted. We ask the Committee to consider how difficult it will be for some victim-survivors who have contributed to previous inquiries in

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<sup>9</sup> Australian Law Reform Commission. 2019. op. cit. p67.

<sup>10</sup> On 18 October 2019, DV Vic signed a [joint statement](#) issued by AWAVA and Fair Agenda rejecting the legitimacy of the Inquiry. The statement was signed by over 100 peak bodies and practitioners.

<sup>11</sup> Herman. 1992; cited in Laing, L. 2017. *Secondary Victimization: Domestic Violence Survivors Navigating the Family Law System*. Violence Against Women. Vol. 23(11).

<sup>12</sup> Australian Law Reform Commission. 2019. *Family Law: Summary of Tell Us Your Story Responses*. Retrieved 16 January 2020. <<https://www.alrc.gov.au/news/family-law-summary-of-tell-us-your-story-responses/>>

good faith, believing that their contributions would result in change to a system that in many cases failed them, to come forward again.

As the peak body for SFVS in Victoria, we are well placed to inform the Inquiry about evidence-based best practice responses<sup>13</sup> to victim-survivors so this can inform the processes of the Inquiry to ensure they are safe for victim-survivors who choose to participate. In this regard, we ask the Inquiry to bear in mind that any response or process that questions the truthfulness of a woman's deeply personal experience, or continually asks a woman to relive her traumatic experience by being asked to retell her story, can be retraumatising and harmful to her recovery and can embolden perpetrators.

We urge the Inquiry to ensure that adequate safeguards are in place to facilitate and support participation throughout the Inquiry. In addition to the existing *Protocols for Submissions and Hearings*<sup>14</sup>, we submit that victim-survivors must have access to fully funded specialist support, including face-to-face counselling and emergency support and access to free legal advice to safely participate if they choose to do so. We also believe that each of the committee members should undergo training on the effects of trauma on victim survivors, vulnerable witnesses and children so they are able to better understand the evidence put before them and to mitigate against vicarious traumatisation.

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<sup>13</sup> Family Safety Victoria. 2017. *Responding to Family Violence Capability Framework*. Victorian Government: p10, notes there is a solid evidence base that has resulted in a sophisticated understanding of best practice in responding to victim survivors of family violence.

<sup>14</sup> Joint Select Committee on Australia's Family Law System. 2019. *Protocols for submissions and hearings*. Retrieved 16 January 2020 <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Family\\_Law\\_System/FamilyLaw/Protocols](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Family_Law_System/FamilyLaw/Protocols)>

## Underpinning principles of reform

In order to address the matters set out in the *Terms of Reference*, it is important to articulate some of the principles that must underpin reform of the family law system as we believe that if the system is not guided by these principles, it will undermine reform activity and continue to result in unjust outcomes, and be unsafe for victim-survivors of family violence.

### Family violence is a central issue, not a side issue, in the family law system

#### Prevalence of family violence in family law proceedings – the ‘tip of the iceberg’

Current evidence clearly demonstrates that family violence is a predominant issue in family court proceedings<sup>15</sup>. The Victorian Royal Commission into Family Violence found that “family violence is a common feature of family law disputes, particularly those that end up in court”<sup>16</sup> and the final report of the ALRC review detailed studies that found 60% of separated parents report experiencing physical hurt or emotional abuse prior to or during separation; and for parents in the family law courts:

- 85% reported a history of emotional abuse; and
- 54% reported a history of physical violence<sup>17</sup>.

This high prevalence of family violence is also reflected in Legal Aid data which indicates that ‘nearly 80% of legally aided matters in the family law system involve family violence’<sup>18</sup>.

#### Limitations of data - barriers to disclosure and underreporting

We submit that these figures represent the ‘tip of the iceberg’ as many incidences of family violence go unreported leading to the true extent of family violence experienced by women and children remaining hidden<sup>19</sup>. Choosing to disclose family violence is a deeply personal, individual and difficult decision and women face many barriers to disclosing and seeking help for family violence<sup>20</sup>. Attitudes conveyed by individuals and systems can directly or indirectly discourage disclosure<sup>21</sup> and it is deeply concerning that statements made during the establishment of this Inquiry questioning the validity of women’s experiences<sup>22</sup> of family violence may result in some victim-survivors not feeling safe to disclose violence they are experiencing due to concerns that they will not be believed.

<sup>15</sup> Australian Institute of Family Studies (AIFS). 2019. *Parenting arrangements after separation: Evidence Summary*.

<[https://aifs.gov.au/sites/default/files/publication-documents/1910\\_parenting\\_arrangements\\_after\\_separation.pdf](https://aifs.gov.au/sites/default/files/publication-documents/1910_parenting_arrangements_after_separation.pdf)>; ALRC. 2019. op. cit.; Carline, A. & Eastaer, P. 2014. *Shades of Grey – Domestic and Sexual Violence Against Women: Law Reform and Society*, Routledge, Oxford.

<sup>16</sup> State of Victoria. 2016. *Royal Commission into Family Violence: Summary and recommendations*. Parl Paper No 132 (2014–16), p181.

<sup>17</sup> ALRC. 2019. op. cit.; Kaspiew, R., Gray M., Weston R., Moloney, L., Qu., L. 2009. *Evaluation of the 2006 family law reforms*. Melbourne; Kaspiew, R., Carson, R., Dunstan, J., De Maio, J., Moore, S., Moloney, L. et al. (2015). *Experiences of Separated Parents Study (Evaluation of the 2012 Family Violence Amendments)*. Melbourne.

<sup>18</sup> National Legal Aid. 2016. COAG commitment welcomed as new DV figures released. Media Release, 18 April 2016.

<[https://www.nationallegalaid.org/resources-2/nla-media-3/#gdocs\\_preview\\_standalone](https://www.nationallegalaid.org/resources-2/nla-media-3/#gdocs_preview_standalone)>; Rich, N. 2017. *Time for new ideas and true change in family law system review*, Victorian Legal Aid, retrieved 27 April 2018, <<https://www.legalaid.vic.gov.au/about-us/news/time-for-new-ideas-and-true-change-in-family-law-system-review>>

<sup>19</sup> AIHW. 2018. *Family, domestic and sexual violence in Australia 2018*. Cat. No. FDV 2. Canberra: AIHW. p5; RACGP White Book: <https://www.racgp.org.au/clinical-resources/clinical-guidelines/key-racgp-guidelines/view-all-racgp-guidelines/white-book/partner-abuse>; Laing, L. 2010. *No way to live: Women’s experiences of negotiating the family law system in the context of domestic violence*. University of Sydney <<https://ses.library.usyd.edu.au/handle/2123/6255>>.

<sup>20</sup> Family Safety Victoria. 2019. MARAM Practice Guides: Foundation Knowledge Guide. State of Victoria <<https://www.content.vic.gov.au/sites/default/files/2019-07/MARAM-practice-guides-foundation-knowledge.pdf>>. State of Victoria. 2016. op. cit. *Summary and recommendations*.

<sup>21</sup> The Australian Institute of Judicial Administration. 2019. op. cit.

<sup>22</sup> ABC Radio National. 18 September 2019. *Pauline Hanson slammed over domestic violence comments*.

<<https://www.abc.net.au/radio/programs/worldtoday/pauline-hanson-slammed-over-domestic-violence-comments/11523378>>

In the context of the family law system, in our submission to the ALRC Review, we documented elements of the family law system that can result in women not disclosing violence they have experienced, result in them being reluctant to raise allegations of family violence<sup>23</sup> or frequently being advised by their legal representation not to mention their experience of family violence<sup>24</sup>. These elements include experiencing the system as hostile towards them, resulting in them feeling as though they are ‘put on trial’, viewed with suspicion, and as making vexatious allegations of family violence to ‘gain an advantage’ or achieve parental alienation of the other party<sup>25</sup>. Despite never being accepted “as a legitimate scientific construct, as a syndrome or as a mental disorder”<sup>26</sup> parental alienation continues to be raised by fathers in family law proceedings as a defense to family violence or child sexual abuse allegations and concerns about being seen as an ‘alienator’ can result in women not raising allegations<sup>27</sup>. Views expressed during the establishment of this Inquiry that perpetuate the ‘parental alienation’ myth are highly problematic and harmful to victim-survivors<sup>28</sup>. DV Vic’s position is that the perpetuation of this myth should stop with this Inquiry.

### Family Violence Lens and Victim-Centred Responses

We contend that the centrality of family violence to the work of the family law courts necessitates that a *family violence lens* must be applied throughout the family law system to ensure the safety of victim-survivors is prioritised. This *lens* includes recognising children as victims in their own right and that family law processes and decisions that expose children to a perpetrator of family violence even if the violence has not been directly perpetrated against them, can have devastating impacts for children and their welfare. We submit that the absence of a specialist family violence lens in the family law system has resulted in ‘secondary victimisation’, inadvertently facilitated systems abuse by providing perpetrators with more tactics and avenues to control the victim-survivor and placed victim-survivors in unsafe and retraumatising situations<sup>29</sup>.

The application of a *family violence lens* is dependent on the family law system, and all professionals working within that system having a contemporary and evidence-based understanding of the prevalence, nature and dynamics of family violence and best-practice responses (see section (h) below). This ensures that the professionals working in that system are informed by the extensive evidence base that exists in relation to family violence, and not personal or political interests, anecdotes or individual opinions. This maintains the integrity and community’s confidence in the family law system by ensuring transparent and robust decision-making processes that centralise family violence.

<sup>23</sup> Laing, L. 2010. op cit. p11.

<sup>24</sup> House of Representatives Standing Committee on Social Policy and Legal Affairs. 2017. *A better family law system to support and protect those affected by family violence: Recommendations for an accessible, equitable and responsive family law system which better prioritises safety of those affected by family violence*. Parliament of the Commonwealth of Australia. p.28; State of Victoria, Royal Commission into Family Violence: Report and recommendations, Vol IV, Parl Paper No 132 (2014–16).

<sup>25</sup> Domestic Violence Victoria. 2018. Submission to the Australian Law Reform Commission Review of the Family Law System Issues Paper p.6 <[https://www.alrc.gov.au/wp-content/uploads/2019/08/family-law\\_-23\\_domestic\\_violence\\_victoria\\_14\\_5\\_18.pdf](https://www.alrc.gov.au/wp-content/uploads/2019/08/family-law_-23_domestic_violence_victoria_14_5_18.pdf)>

<sup>26</sup> O’Donohue, W. Benuto, L, Bennett, N. 2016. *Examining the validity of parental alienation syndrome*. Journal of Child Custody. Vol. 13. Nos. 2-3. Pp113-125.

<sup>27</sup> Rathus, Z. 7 November 2019. *Parental alienation: the debunked theory that women lie about violence is still used in court*. Women’s Agenda. Accessed 28 January 2020. <<https://womensagenda.com.au/latest/parental-alienation-the-debunked-theory-that-women-lie-about-violence-is-still-used-in-court/>>

<sup>28</sup> ABC Radio National. 2019. op cit.

<sup>29</sup> Laing, L. 2017 *Secondary Victimization: Domestic Violence Survivors Navigating the Family Law System*. Violence Against Women. Vol. 23(11); North West Metropolitan Region Primary Care Partnerships. 2018. *Guidelines for Identifying and Responding to People Who Cause Family Violence Harm*. <[http://inwpcp.org.au/wp-content/uploads/2018/03/Final-Guidelines-for-identifying-and-responding-to-people-who-cause-family-violence-harm\\_April2018.pdf](http://inwpcp.org.au/wp-content/uploads/2018/03/Final-Guidelines-for-identifying-and-responding-to-people-who-cause-family-violence-harm_April2018.pdf)>

If family violence continues to be marginalised within the family law system it will result in poorer family law outcomes for women and children who are survivors of family violence and dangerously reinforces the incorrect message that experiences of family violence are insubstantial, private matters that are not relevant to family law.

### Safety and risk must be foundational principles for reform

The right to safety for all and an understanding of family violence risk must underpin all processes, decisions and reforms in the family law system. Family violence risk assessment frameworks such as the *Multi-agency Risk Assessment and Management Framework* (MARAM) in Victoria and *the National Risk Assessment Principles for Domestic and Family Violence* (NRAP), recognise that separation is one of the most high-risk times for women. This is unfortunately reflected in the review of intimate partner homicides that occurred across Australia between 2010 and 2014 which found “almost half of the males who killed a former female partner killed that partner within three months of the relationship ending (n=21, 47.7%)”<sup>30</sup>.

Family court proceedings are a time where risk may escalate for victim-survivors and legal proceedings can be used by perpetrators to continue to exert control over victim survivors<sup>31</sup>.

*One of the high-risk factors set out in the Australian National Risk Assessment Principles for Domestic and Family Violence is court orders or parenting proceedings, which perpetrators of family violence use as a way of exercising control over the other parent*<sup>32</sup>

Given the high prevalence of family violence in family court proceedings (see above), safety must be a priority. The family law system must be informed by well-established evidence-based risk assessment frameworks and assessments must be undertaken by practitioners or services with specialist expertise and understanding of family violence. Development of a national risk assessment framework has been a recommendation of several previous inquiries<sup>33</sup> and a *common risk assessment framework* has been demonstrated as being highly beneficial in Victoria<sup>34</sup>. DV Vic continues to support the development of a national common risk assessment framework.

Assessment of risk is a dynamic process and must occur at every stage of the legal process so that it can be identified early (see discussion on ‘early determination’ below) and where risks are identified, processes put in place to manage risk. This ongoing assessment of risk informs safety planning for victim-survivors which is a vital component of any response. For this to occur from the time parties make contact with the family law system and throughout the duration of proceedings, all professionals working within the family law system must have a shared understanding of family violence and risk so they can ‘respond [to] and manage the safety of adults and children exposed to violence appropriately and consistently’<sup>35</sup>. Any risk, whether it be considered low or high, ‘must be identified,

<sup>30</sup> Australian Domestic and Family Violence Death Review Network. 2018. Data Report 2018. Domestic Violence Death Review Team. <<https://apo.org.au/sites/default/files/resource-files/2018/05/apo-nid174811-1209156.pdf>>

<sup>31</sup> Family Safety Victoria .2018. *Family Violence Multi-Agency Risk Assessment and Management Framework*. Melbourne: State of Victoria; Toivonen, C., & Backhouse, C. (2018). *National Risk Assessment Principles for domestic and family violence* (ANROWS Insights 07/2018). Sydney, NSW: ANROWS; NSW Domestic Violence Safety Assessment Tool (DVSAT); [http://www.domesticviolence.nsw.gov.au/\\_data/assets/file/0020/301178/DVSAT.pdf](http://www.domesticviolence.nsw.gov.au/_data/assets/file/0020/301178/DVSAT.pdf); ; Laing, L. 2017. op cit..

<sup>32</sup> Toivonen, C., & Backhouse, C. 2018. op cit.

<sup>33</sup> ALRC. 2019. op. cit. p111: 5 of 11 inquiries recommended development of a National Risk Assessment Framework.

<sup>34</sup> McCulloch, J., Maher, J., Fitz-Gibbon, K., Segrave, M., Roffee, J. 2016. *Review of the Family Violence Risk Assessment and Risk Management Framework (CRAF)*. Prepared for the Department of Health and Human Services by the School of Social Sciences, Focus Program on Gender and Family Violence: New Frameworks in Prevention, Monash University.

<sup>35</sup> Toivonen, C., & Backhouse, C. 2018. op. cit. p5.

comprehensively assessed and appropriately responded to<sup>36</sup> with different ‘levels’ of risk requiring different responses.

Risk assessment must include assessing risks to children and requires the family law system to better recognise that harm caused by perpetrating family violence against an adult is also harm perpetrated against the child. This will help to ensure that child safety as well as the safety of women remains prioritised in decision making processes. We refer the Committee to the MARAM framework in Victoria which has incorporated risk factors for children<sup>37</sup>.

## Responses to the Terms of Reference

### a. Information sharing – family violence knows no legal boundaries

Ongoing issues and further improvements relating to the interaction and information sharing between the family law system and state and territory child protection systems, and family and domestic violence jurisdictions, including:

- i. the process, and evidential and legal standards and onuses of proof, in relation to the granting of domestic violence orders and apprehended violence orders, and
- ii. the visibility of, and consideration given to, domestic violence orders and apprehended violence orders in family law proceedings

Family violence is a complex phenomenon that can impact on every aspect of a victim survivors’ life and often requires navigation of multiple jurisdictions, pieces of legislation and service systems<sup>38</sup>. Despite a significant amount of work being undertaken over the last decade with respect to the intersection between family violence, family law and child protection<sup>39</sup>, the ALRC review and the RCFV found that further improvements need to be made to the way state and federal jurisdictions interact to close jurisdictional gaps that undermine the safety of victim-survivors. The following example illustrates the various courts a family may interact with as a result of family violence:

*Two months ago, police applied for a family violence intervention order for Jane after they attended an incident at her home (**Victorian Magistrates’ Court-civil**). Her partner Rob had physically assaulted her resulting in police charging him with assault (**Victorian Magistrates’ Court-criminal**). Jane’s two young children were present at the home and police notified **child protection** who have opened an investigation and have filed proceedings in the **Children’s Court**. The intervention order does not allow Rob to see his children and he has filed an application in the **Federal Circuit Court**.*

Navigating multiple systems can be extremely confusing, and the fragmentation between the state courts and federal family law courts creates jurisdictional gaps that place ‘already vulnerable parents

<sup>36</sup> *ibid*

<sup>37</sup> Family Safety Victoria. 2018. *op. cit.* p30.

<sup>38</sup> House of Representatives Standing Committee on Social Policy and Legal Affairs. 2017. *op. cit.*; The Australian Institute of Judicial Administration. *op. cit.*; State of Victoria, Royal Commission into Family Violence: Report and recommendations, Vol IV, *op. cit.* p201-202

<sup>39</sup> Women’s Legal Service Victoria. 2018. Submission to *ALRC Review of the Family Law System: Response to Issues Paper*. <<https://www.alrc.gov.au/inquiry/review-of-the-family-law-system/submissions-7/>> No. 413.

and children at further risk<sup>40</sup>. It provides opportunities for perpetrators to exploit these gaps and to use the justice system to perpetuate abuse against their partner by misusing and manipulating legal processes to continue their control and coercion of survivors of family violence (known as ‘systems abuse’)<sup>41</sup>. Systems abuse has been detailed in previous reports and recommendations have been made to prevent it, that point to measures that promote cross-jurisdictional responses that are collaborative, integrated and coordinated<sup>42</sup>. The final report of the ALRC review notes:

*the various inquiries and reports over several decades, and especially those within the last 20 years, have all identified similar structural and systemic problems in the family law system. They have all recommended improved inter-jurisdictional collaboration and cooperation through a variety of protocols, information sharing agreements, and the conferral of enhanced family law jurisdiction on state and territory courts. In spite of those recommendations, the submissions to this Inquiry suggest that little progress has been made in protecting children and vulnerable parties from the ‘jurisdictional gap’<sup>43</sup>*

We contend that some of the difficulty in bridging the ‘jurisdiction gap’ is due to the difference in how family violence is understood and assessed in each jurisdiction<sup>44</sup>, and the different priorities of the state and federal systems. This undermines the shared understanding of family violence that is critical for the development of a cross-jurisdictional collaborative and integrated response, results in seemingly unreconcilable tensions between the two systems and contradictory rather than complementary and mutually reinforcing outcomes. This contradiction is evident in the family law system that requires women to negotiate for their child(ren) to have contact with a person when previously they have been issued with an intervention order in the State jurisdiction that prevents that person having contact with the children due to concerns for their safety as a result of family violence they have experienced<sup>45</sup>. It is difficult to see how the ‘gap’ will be closed while the family law system is viewed as continuing to prioritise “parental involvement, over concerns that children might be exposed to further abuse or violence”<sup>46</sup>.

The contradiction in the way family violence is viewed by the courts means that conflicting messages are sent to victim-survivors of family violence. This can be retraumatising for victim-survivors and results in them feeling their concerns, primarily around family violence, are not taken seriously and that the family law system condones the violent behaviour<sup>47</sup>. It has resulted in women ‘finding themselves shifting from being designated as ‘the failure to protect mother’ [by child protection] to that of the ‘alienating mother’ [by the family law system]’<sup>48</sup>.

As noted in our submission to the *ALRC Review of the Family Law System*, DV Vic supports models of information sharing and management of proceedings that lend themselves to a specialist ‘one-court’

<sup>40</sup> Francia, et al. op. cit. 2019; State of Victoria, Royal Commission into Family Violence: Report and recommendations, Vol IV, Parl Paper No 132 (2014–16). Chapter 24: Family Violence and the Family Law System.

<sup>41</sup> The Australian Institute of Judicial Administration. 2019. op. cit.

<sup>42</sup> See for example: State of Victoria, Royal Commission into Family Violence: Summary and recommendations, Parl Paper No 132 (2014–16). Recs 1, 2, 129-137; ALRC. 2019. op. cit. Recs 1 and 2; House of Representatives Standing Committee on Social Policy and Legal Affairs. 2017. op. cit.

<sup>43</sup> ALRC. 2019. op. cit. p123

<sup>44</sup> ALRC. 2019. p111: A major theme that emerged from an analysis of 11 inquiries conducted between 2001–2017 included that the family law system does not deal well with violence with eight (72%) of the inquiries recommending national mandatory family violence training.

<sup>45</sup> Francia. et al. 2019. op. cit.; Laing, L. 2017. op.cit.

<sup>46</sup> Francia. et al. 2019. op. cit.

<sup>47</sup> ibid

<sup>48</sup> Laing, L. 2017. op. cit. p38



model (see section (b)), as such models have the potential to reduce fragmentation in responding to family violence within the justice system. Further, we continue to endorse legislative reforms and changes to court protocols that will increase ‘safe and appropriate’ information sharing between the family court and courts and services in other jurisdictions but caution that better information sharing cannot be seen as a solution or ‘panacea’ to addressing fragmentation between state and federal court systems<sup>49</sup>. Sharing of information is highly dependent on those charged with the responsibility of sharing it having appropriate knowledge and skills so they can interpret any information they receive, determine how that information can be used, make decisions as to relevancy of that information and whether sharing information will pose a risk to a victim-survivors safety.

As outlined in our submission to the ALRC review<sup>50</sup>, any information sharing regime must be underpinned by a legal framework that minimises “potential risks of information sharing”<sup>51</sup>. Such a framework must:

- maintain and prioritise consent of victim survivors when sharing information
- provide highly prescribed roles and responsibilities for organisation’s captured under the scheme
- mandate and monitor workforce training in family violence informed risk assessment for all staff involved
- be supported by a national risk management framework that promotes a shared understanding family violence and risk across state and federal jurisdictions
- allows only risk relevant information to be shared and sets out safeguards against the inappropriate use of information
- does not allow perpetrators to access information about women and children affected by violence
- does not perpetuate the misidentification of primary aggressors, and
- prescribes robust, independent, governance mechanisms to implement, monitor and evaluate the scheme.

Information-sharing that promotes safe and appropriate sharing of risk relevant information can reduce the onus on victim survivors to have to continually retell their stories, can ensure court professionals are able to fully inform themselves about existing risk and safety concerns and can help detail the pattern of coercion and control that a victim-survivor has experienced.

Responses to points (i) and (ii) are addressed below in section (b) in the discussion regarding Early Determination of family violence.

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<sup>49</sup> ALRC. 2019. op. cit. p.145.

<sup>50</sup> Domestic Violence Victoria. 2018. *Submission to the Australian Law Reform Commission Review of the Family Law System Issues Paper*. <[https://www.alrc.gov.au/wp-content/uploads/2019/08/family-law\\_-23\\_domestic\\_violence\\_victoria\\_14\\_5\\_18.pdf](https://www.alrc.gov.au/wp-content/uploads/2019/08/family-law_-23_domestic_violence_victoria_14_5_18.pdf)>

<sup>51</sup> ALRC. 2019. op. cit. p149.

## b. Evidence of domestic and family violence in family law courts

The appropriateness of family court powers to ensure parties in family law proceedings provide truthful and complete evidence, and the ability of the court to make orders for non-compliance and the efficacy of the enforcement of such orders.

In the family law system, contrary to assertions made during the establishment of the Inquiry that women falsify allegations of family violence<sup>52</sup>, there is no research to show that women make false or exaggerated claims of domestic and family violence to get an advantage in court cases about parenting<sup>53</sup>. As noted in the Domestic and Family Violence Bench Book, “making of false allegations is much less common than the problem of genuine victims who fail to report abuse, and the widespread false denials and minimisation of abuse by perpetrators”<sup>54</sup>. Further, recent research has shown that even when family violence is raised, it is “extremely rare for men to not get access to their children [and] in final matters determined by the court only 3% resulted in fathers having no access to children despite family violence being present in a significant proportion of cases (physical violence 54%, emotional abuse 85%)”<sup>55</sup>. This evidence directly contradicts assertions made during the establishment of this Inquiry that infer that the “family court is discriminating against fathers”<sup>56</sup>.

As noted earlier, we remind the Committee how harmful and detrimental to victim-survivors physical and psychological safety it is to cast doubt on the validity of their experiences of family violence and how it can discourage disclosure and help-seeking which can further isolate them. As noted in the *SPLA report*, such attitudes and behaviours contribute to the stigma and discrimination that surrounds women experiencing family violence, particularly for especially at risk and marginalised survivors of family violence who are also sex workers, women in prison, women with disabilities, Aboriginal and Torres Strait Islander, from CALD backgrounds, and/or LGBTIQ<sup>57</sup>. We urge the Committee to base their inquiries regarding ‘truthful and complete evidence’ on evidence and fact.

### (i) Early Determination of Family Violence

Greater specialisation in the way the court responds to family violence and the early determination of family violence has potential to provide the family court with a mechanism to test evidence of domestic and family violence early and where family violence is identified, put risk management and mitigation processes in place. This would result in safer outcomes for victim-survivors, assist the court to decide what is in the best-interest of children and improve court efficiency by ensuring relevant evidence is put before the court.

In this regard, DV Vic supports early determination of family violence through a family violence informed case management process and the early testing of evidence of family violence as outlined in

<sup>52</sup> ABC Radio National. 18 September 2019. *Pauline Hanson slammed over domestic violence comments*.

<<https://www.abc.net.au/radio/programs/worldtoday/pauline-hanson-slammed-over-domestic-violence-comments/11523378> >

<sup>53</sup> Family Violence Law Help. 2019. *Myths and Misunderstandings*: Women often make false or exaggerated claims of domestic and family violence to get an advantage in court cases about parenting. <<https://familyviolencelaw.gov.au/domestic-family-violence/myths-and-misunderstandings/>>; The Australian Institute of Judicial Administration. 2019. op cit. Laing, L. 2010. op cit.

<sup>54</sup> Jaffe, Peter G., Janet R. Johnston, Claire V. Crooks, Nicholas Bala. 2008. *Custody disputes involving allegations of Domestic violence: toward a differentiated approach to parenting plans*. 46(3) Family Court Review.

<sup>55</sup> AIFS. 2019. *Parenting arrangements after separation*. <[https://aifs.gov.au/sites/default/files/publication-documents/1910\\_parenting\\_arrangements\\_after\\_separation.pdf](https://aifs.gov.au/sites/default/files/publication-documents/1910_parenting_arrangements_after_separation.pdf)>

<sup>56</sup> Hall, B. 2019. *A fraction of fathers lose access to their kids: why the Family Court isn't anti-men*. *Sydney Morning Herald*

<<https://www.smh.com.au/politics/federal/a-fraction-of-fathers-lose-access-to-their-kids-why-the-family-court-isn-t-anti-men-20190919-p52syn.html>>

<sup>57</sup> House of Representatives Standing Committee on Social Policy and Legal Affairs. 2017. op. cit.

WLSA's *Safety First in Family Law plan*<sup>58</sup> and as recommended in the *SPLA report*<sup>59</sup>. Given the high proportion of cases in the family law system where family violence is raised as an issue, we submit that early determination of family violence is critical in ensuring that family violence is made visible and in promoting safe and just processes and outcomes for all parties. It is essential that assessments are undertaken by professionals with extensive knowledge, skills and expertise in family violence and risk assessment as in the current system "too much weight can be given to reports by family consultants who sometimes [have] little to no knowledge of family violence"<sup>60</sup>.

In the absence of early determination of family violence, the onus is placed on victim-survivors to manage their own risk and safety until the court makes a determination, allows family violence to remain invisible to the system and allows perpetrators to continue to misuse the system to control victim-survivors and perpetrate violence. It results in victim-survivors feeling that the family law system does not take family violence seriously which undermines their confidence in the system.

### c. Reforms in the family law system

Beyond the proposed merger of the Family Court and the Federal Circuit Court any other reform that may be needed to the family law and the current structure of the Family Court and the Federal Circuit Court.

#### Merger of the Family Court and the Federal Circuit Court

DV Vic supports reforms to the family law system that strengthen and increase specialisation and close jurisdictional gaps. The proposed merger of the Family Court and the Federal Circuit Court has the potential to diminish rather than strengthen specialisation which is critically important given the complexity of matters before the court and seems contrary to the recommendations made in previous reports which point to increased specialisation in family law and family violence<sup>61</sup>. In 2019, DV Vic was one of many organisations that endorsed an "open letter, calling on the Attorney-General to abandon the government's proposed family court merger and instead strengthen specialisation in family law and family violence"<sup>62</sup>. We continue to support the position outlined in the open letter and are concerned that the Government seems to be progressing its plan to merge the Federal Circuit and Family Court of Australia<sup>63</sup>. We note that this also seems premature given that the Government has not fully considered the 60 recommendations made as a result of the ALRC review and before this Inquiry has concluded.

#### Specialist family violence 'one-court' model underpinned by holistic case management service

As noted above, and in our submission to the ALRC review, DV Vic supports reforms that lend themselves to a specialist 'one-court' model that have the potential to reduce fragmentation in

<sup>58</sup> WLSV. 2019. op. cit.

<sup>59</sup> House of Representatives Standing Committee on Social Policy and Legal Affairs. 2017. op. cit. rec 3 and 7.

<sup>60</sup> ALRC. 2019. op. cit.

<sup>61</sup> See for example: ALRC. 2019. op. cit.; House of Representatives Standing Committee on Social Policy and Legal Affairs. 2017. op. cit.

<sup>62</sup> 11 November 2019. Open Letter to the Attorney-General. *Concerns about proposed family court merger*. Retrieved 16 January 2020. < <https://www.lawcouncil.asn.au/files/media-releases/1969%20--%20Letter%20to%20AG%20re%20concerns%20about%20family%20court%20merger.pdf>>; Law Council of Australia. 2019. *Put safety first in family law, abandon flawed family court merger, Media Release*. Retrieved 16 January 2020 < <https://www.lawcouncil.asn.au/media/media-releases/put-safety-first-in-family-law-abandon-flawed-family-court-merger>>

<sup>63</sup> On 5 December 2019, the Senate introduced bills that would bring the Federal Circuit Court of Australia and Family Court of Australia together: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Federalcircuitcourt](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Federalcircuitcourt)

responding to family violence within the whole justice system. A specialist family violence one-court model would be underpinned by a holistic case management service that is family violence and trauma-informed and provides parties with practical and emotional support until their matter is finalised. This service would be free and voluntary to ensure that it is client-centred and would assist each party to understand and navigate the different and intersecting jurisdictions pertaining to their matters. In this sense, it would sit across all courts and therefore assist with coordination of all related court matters, as well as triage, early and ongoing assessment and management of family violence risk.

As detailed in our submission to the ALRC review of the family law system<sup>64</sup>, important features of the holistic case management service include:

- Each party would be allocated a case manager when they initiate contact with the family court;
- Case managers with specialist family violence expertise, as well as specialist non-legal Aboriginal and Torres Strait Islander case workers and cultural liaison workers;
- All practitioners would understand the intersection between gender, family violence and other forms of structural oppression including the social construction of disability, race and ethnicity, and sexuality;
- Early and ongoing assessment of family violence and management of family violence risk by case managers with specialist family violence expertise (for both perpetrators and victims);
- Shared/collaborative case management where clients are also being supported by SFVS outside the family law system;
- Independent of but, based within the family law system;
- Collaboration between legal support services and non-legal services, as well as having close links (referral protocols and shared case management) with external services such as the local specialist family violence service, Aboriginal Community Controlled Organisations, and culturally and linguistically diverse services.

We believe a specialist family violence ‘one-court’ model underpinned by a holistic case management service has potential to reduce fragmentation between various jurisdictions, reduce opportunities for perpetrators of family violence to exploit gaps in the system and increase the safety and well-being of women and children who experience family violence. It will also address many obstacles that exclude victim-survivors of family violence who experience cumulative barriers to accessing the family law system – such as Aboriginal and Torres Strait Islander women, women from CALD backgrounds, women with disabilities, and LGBTIQ people, by providing a comprehensive assessment process that identifies barriers and needs and ensures that the system provides supportive structures and processes that allow them to fully participate.

### **Removal of presumption of equal shared parental responsibility and equal shared time**

DV Vic strongly supports the eradication of the ‘equal shared parental responsibility’ and ‘equal shared time’ principles and associated practices that force women and children to be continuously exposed to family violence and abuse through contact with the perpetrator. Increasing emphasis on shared parenting and the difficulty of achieving post-separation parenting arrangements in the context of family violence that protect women and children from ongoing violence and abuse, may strongly influence a woman’s decision to stay in a relationship if she judges that her children will be safer with

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<sup>64</sup> DV Vic. 2018. op. cit.

her rather than facing the prospect of them being ordered to spend long periods of time alone with the perpetrator of abuse.

It also sends the incorrect message that family violence does not have a harmful impact on children, and that perpetrators do not need to be held to account for their behaviour or the very significant impacts of it on their children. Legal principles in relation to parenting should be focused on the rights of children to safety and the elimination of harm to them, based on increasing evidence that ‘maintaining a relationship between children and abusive fathers is likely to be harmful unless the abusive behaviour ends.’<sup>65</sup> Regardless of views on parental rights, it is contrary to the rights and best interests of children for the family law system to collude with exposing children to ongoing violence, or for children to be used as a tactic to further perpetrate violence against their mother, through orders allowing contact based on the principle that it is in the best interests of children for their parents to have equal shared parental responsibility.

If the family law system is to be family violence and trauma informed, it will recognise in its principles, processes and decisions that children cannot have a meaningful relationship with both parents, if the child’s father is using violence against the child’s mother. If a need to protect the child from harm caused by family violence is established – that is, family violence has been established - this effectively prohibits contact with the perpetrator of the family violence until the perpetrator’s behaviour has changed. In these cases, it would be interesting to see what powers the court can develop to refer men who use family violence to men’s behaviour change interventions as a pre-condition to having any access to their children.

#### d. Financial costs and property disputes

The financial costs to families of family law proceedings, and options to reduce the financial impact, with particular focus on those instances where legal fees incurred by parties are disproportionate to the total property pool in dispute or are disproportionate to the objective level of complexity of parenting issues, and with consideration being given amongst other things to banning ‘disappointment fees’, and:

- i. capping total fees by reference to the total pool of assets in dispute, or any other regulatory option to prevent disproportionate legal fees being charged in family law matters, and
- ii. any mechanisms to improve the timely, efficient and effective resolution of property disputes in family law proceedings.

As noted in our submission to the *ALRC review of the Family Law System*, a link has been established between family violence and financial insecurity for women and ‘many survivors do not have the economic resources to leave violence, or if they do leave, they lack the resources to maintain an adequate standard of living post-separation’<sup>66</sup>. Further, research demonstrates:

<sup>65</sup> Kaspiew, R., Horsfall, B., Qu, L., Nicholson, J.M., Humphreys, C., Diemer, K., Nguyen, C.D., Buchanan, F., Hooker, L., Taft, A., Westrupp, E.M., Cookin, A.R., Carson, R. & Dunstan, J. 2017. *Domestic and Family Violence and parenting: Mixed methods insights into impact and support needs: Final Report*, ANROWS, Sydney, p.13.

<sup>66</sup> Corrie, T. 2016. *Economic security for survivors of domestic and family violence: Understanding and Measuring the Impact*, Good Shepherd Australia New Zealand, p.9, retrieved 16 January 2020, < [https://www.goodshep.org.au/media/1421/financial-security-for-survivors-of-domestic-and-family-violence\\_march2016.pdf](https://www.goodshep.org.au/media/1421/financial-security-for-survivors-of-domestic-and-family-violence_march2016.pdf); Smallwood, E. 2015. *Stepping Stones: Legal barriers to economic equality after family violence*. Women’s Legal Service Victoria, Melbourne.

*systemic continuation of economic abuse post-separation through the courts and government agencies. This may include the ongoing engagement of the victim in legal proceedings so as to prolong the burden and impact of legal costs, for example by undermining the victim's ability to work; or masking income and hiding assets to avoid paying child support.*<sup>67</sup>

It is well established that participating in the family law system is prohibitively expensive for survivors of family violence who have been left with limited financial resources because of family violence and can lead to long-term impoverishment of survivors of family violence<sup>68</sup>. For many women who experience intersecting forms of oppression, the cost of legal fees exceeds the value of assets owned by both parties. The quote from a victim-survivor below illustrates how pro-longed court proceedings were used by her ex-partner to exhaust her financial resources:

*I remember I asked once for a reprieve from being constantly dragged back to court, so we could get on with our lives. But basically, everyone has the right to bring a case to court. So here we are 10 years down the track – he's earning his millions and I am pretty much living from week to week. Couldn't afford to continue with my studies, pretty much lost my career and I'm turning 52 next week ...*<sup>69</sup>

Any consideration of financial costs must take into consideration how prohibitive costs are a barrier to accessing justice, create an unfair 'playing field' and power imbalance, and contributes to an increase in the number of unrepresented litigants in family court matters which creates inefficiencies and inequities in the system.

We firmly believe that the assets limit for funded legal representation should be increased to enable a wider range of survivors of family violence to be legally represented in the family law system. In particular, we draw attention to the benefits to the family law system of increasing family violence specific funding to legal aid and community legal centres, specifically women's legal services, legal services for women from CALD communities, and Aboriginal Family Violence Prevention Legal services. We firmly believe that action must be taken on funding legal representation to address the particularly chronic issue of being 'conflicted out' of legal aid or community legal support in rural and regional areas. Additionally, we believe it is urgent that women from CALD backgrounds with temporary migration status are able to access fully-funded legal representation for family law matters.

Access to legal advice and representation is critically important and should be available to all parties in family law proceedings. For victim-survivors this is vital in ensuring they are aware of their legal rights and that they understand the complex legal processes that ultimately result in decisions that will affect them for many years. It is also important in ensuring that all parties understand court processes and decisions that are made by the court.

### Property Disputes

Women affected by family violence are considerably disadvantaged in family law property matters. Research has shown that they are more likely to experience an unfair outcome and suffer long-term

<sup>67</sup> Cameron, P. 2014. *Relationship Problems and Money: Women Talk about Financial Abuse: Research Report*. Wire Women's Information, cited in Australian Domestic and Family Violence Benchbook. 2019. op. cit. section 3.1.3.

<sup>68</sup> House of Representatives Standing Committee on Social Policy and Legal Affairs, 2017. op. cit.

<sup>69</sup> Cameron, P. 2014. op. cit. p. v.

financial hardship<sup>70</sup>. Women’s Legal Service Victoria found that ‘power imbalances and ongoing violence or intimidation make them fearful of seeking their share of property through the family law system’<sup>71</sup>. Like other areas of the family law system, perpetrators of violence are leveraging principles and processes in property matters to extend their coercion and control over former partners. DV Vic continues to endorse the recommendations set out in *WLSV Small Claims, Large Battles*<sup>72</sup> report, particularly those in relation to responding to family violence.

In cases of family violence, property and parenting matters are often indistinguishable from each other, therefore DV Vic agrees with proposals to simplify and streamline property disputes, as well as including the principle of the best interests of the child as the paramount principle in deciding property matters. We further add that the issues should be considered together, with legal assistance and non-legal case management support. The early determination of family violence and recognition of the role family violence plays in property disputes will mitigate delays and the expense of using the family law system for survivors of family violence and reduce opportunities for systems abuse to be perpetrated.

#### e. Family law support services and family dispute resolution

The effectiveness of the delivery of family law support services and family dispute resolution processes.

DV Vic supports equitable access to a fully funded and resourced family law support services in all family court locations. As discussed earlier, we support the implementation of a holistic case management service which would incorporate specialist family violence practitioners and legal professionals working collaboratively to support all parties throughout family law proceedings. This would include the introduction of specialist practitioners with expertise in family violence in all family court registries to ensure that no matter which court a person attends they can access support. The so-called ‘post-code’ justice present in the current family law system results in many people not having access to vital support at court. The important and essential role that non-legal support services play, needs to be recognised as an essential part of the process as they have a critical role in identifying, assessing and managing risk<sup>73</sup>. Further, SFVS are well placed to assess all the psycho-social needs a person may have and if working collaboratively with legal support services, provide a holistic response to victim-survivors of family violence rather than the siloed and fragmented response they too often receive.

#### Expansion of Legally Assisted Family Dispute Resolution

As detailed in our submission to the ALRC review of the Family Law System, DV Vic members note that the adversarial model used in the current family law system is one of the most significant barriers to access and engagement for survivors of family violence<sup>74</sup>. This resonates with the findings of the *SPLA Report* that ‘the current adversarial system is inappropriate for resolving family law disputes, particularly those involving family violence’<sup>75</sup> and in the *ALRC Report* which noted that “there is a significant body of evidence that adversarial court processes exacerbate conflict and trauma and are

<sup>70</sup> Kaspiew, R. & Qu, L. 2016. ‘Property division after separation: Recent research evidence,’ *Australian Journal of Family Law*, vol.30, no.3.

<sup>71</sup> WLSV. 2018. *Small Claims, Large Battles: Achieving economic equality in the family law system*, WLSV, Melbourne. p8.

<sup>72</sup> *Ibid*, p8

<sup>73</sup> Domestic Violence Victoria. 2018. *op. cit.* p15: “It is the experience of specialist family violence services that they are marginalised by lawyers when mutual clients are using the family law system”.

<sup>74</sup> *ibid*

<sup>75</sup> House of Representatives Standing Committee on Social Policy and Legal Affairs. 2017. *op. cit.*

not in the best interests of children”<sup>76</sup>. The adversarial model replicates the power imbalance of family violence and colludes in the coercion and control of women experiencing family violence<sup>77</sup>. It is a space that advantages perpetrators of family violence and disempowers survivors, as reflected by one DV Vic member:

*The adversarial system doesn't work. Perpetrators thrive in this environment. It's incumbent on the parties to provide evidence to the judge in a context where she is already traumatised and will be more traumatised by the family law experience that exposes her to further coercion and control. It's unreasonable.*

The adversarial system is combative in nature, deterring survivors of family violence from participating in it, to settle early, and/or to not raise their experience of family violence at all in order to preserve their own safety and well-being and that of their children. As a result, the current family law system frequently fails to deliver justice to survivors of family violence.

In the long-term, we support exploration of inquisitorial models that can overcome the limitations of the current adversarial system and in the short term, we support the expansion of Legally Assisted Family Dispute Resolution. Evidence has shown that legally-assisted and supported family dispute resolution has improved outcomes for survivors of family violence including children, with many describing the process as safe and empowering<sup>78</sup>. Provision of legal and non-legal assistance can expand the type of matters that may be suitable for LAFDR and overcome some of the barriers and risks that may lead to victim-survivors of family violence being ‘screened out’ of these forms of alternative dispute resolution.

Any LAFDR should be underpinned by the same principles as the broader family law system and place the safety of women and children as the highest priority. As noted in the ALRC Report, “involvement of services with expertise in family violence in the development and application of screening, assessment, and support procedures and guidelines”<sup>79</sup> is a critical component of LAFDR models to ensure that legal and non-legal services provide holistic case management to addresses the complex needs of victim-survivors.

The expansion of LAFDR would require an increase in funding and resources to services including legal aid, community legal centres and specialist family violence services. This would ensure that essential components of the LAFDR model including legal advice to both parties, family violence risk assessment and identification and access to non-legal support for all parties can be provided.

## f. Impact of family law proceedings

The impacts of family law proceedings on the health, safety and wellbeing of children and families involved in those proceedings.

<sup>76</sup> ALRC. 2019. op. cit. p50

<sup>77</sup> Dr Heather Nancarrow, Chief Executive Officer, Australia’s National Research Organisation for Women’s Safety, Committee Hansard, Sydney, 31 July 2017, p. 6.

<sup>78</sup> Kaspiew, R., De Maio, J., Deblaquiere, J. & Horsfall, B. 2012. *Evaluation of a pilot of legally assisted and supported family dispute resolution in family violence cases: Final report*, Australian Institute of Family Studies, retrieved 22 January 2020, <<https://www.ag.gov.au/Publications/Documents/ArchivedFamilyLawPublications/CFDR%20Evaluation%20Final%20Report%20December%202012.PDF> >

<sup>79</sup> ALRC. 2019. op.cit. p273



Family law proceedings, particularly where family violence is an issue, have broad and wide-ranging impacts on women and children. For many victim-survivors, family violence does not stop or end when they physically separate from their partner and decisions made by family law courts dictate how much contact a victim-survivor will have with a person that has used family violence against them.

The lengthy nature of family court proceedings and the way they can be used by perpetrators to continue to control victim-survivors means that it is impossible for them to begin the process of recovery while engaging in the legal system and this can have ongoing impacts on their health, safety and well-being. As highlighted earlier in this submission, family violence profoundly impacts a victim-survivors financial security and family law proceedings can exacerbate the financial impacts<sup>80</sup>. Family violence is the leading cause of homelessness for women and children<sup>81</sup> and is often a “key factor influencing a woman’s decision or ability to leave, stay or return to an abusive relationship”<sup>82</sup>. Legal processes that prolong the resolution of financial and property matters post-separation can adversely impact on a victim-survivor’s financial security, which in turn can affect her health, safety and wellbeing.

Other impacts that victim-survivors may experience if they are required to continue to engage in legal processes that force them to see the person who has and continues to use violence against them include:

- Undermining of a women’s **confidence, self-esteem and sense of self** as her desires, opinions, values, feelings and needs are ignored by the perpetrator.

*I went into this hollow space where I felt as if I wasn’t even real. Paul was acting like I didn’t exist. He wouldn’t speak to me or answer me, and walked past me as if I wasn’t there. After a while it made me feel really strange. The silence would ring in my ears and I felt numb and blank, like I was living in a vacuum where I was invisible<sup>83</sup>*

- **Loss of freedom and fundamental human right to live safely and free from violence:**

*The most distressing thing I lost was me, my [self-worth]. Couldn’t think straight, even to the point I couldn’t write a shopping list: I couldn’t concentrate. I was always worried that I may do or say the wrong thing. It is so hard to describe the mental torment, always questioning yourself. Never being able to comprehend that this person who is supposed to love me can hurt you so badly<sup>84</sup>*

- **Loss of social connections and close relationships** as victim-survivors may withdraw socially, avoid situations and become isolated from parents, siblings, friends and other significant people in their lives that could offer support.
- Profound impacts on a woman’s **physical and emotional/mental wellbeing:**
  - Intimate partner violence is the leading contributor to death, disability and illness in Victorian women aged 15-44.

<sup>80</sup> Smallwood, E. 2015. op. cit.

<sup>81</sup> AIHW. 2019. op. cit.

<sup>82</sup> Ibid. p6

<sup>83</sup> Douglas, K 1996. *Invisible wounds: a self-help guide for women in destructive relationships*. p50.

<sup>84</sup> State of Victoria. 2016. *Royal Commission into Family violence: Report and Recommendations*, Vol. 1. Parl Paper No. 132 (2014-16). p19

- It profoundly impacts on women’s physical and mental health including: stress related illness, depression, acute emotional pain, exhaustion, suicide attempts, anxiety, eating disorders, traumatic and post-traumatic stress disorders, alcohol and drug use.<sup>85</sup>
- 40% of victims of family violence attending Victorian hospitals over a ten-year period sustained a brain injury<sup>86</sup>.

### Impacts on Children and Young People

Family violence has significant consequences for infants, children and young people as victim-survivors in their own right, whether they are directly targeted with abuse, witness abuse or violence towards their parent/carer, or are exposed to the effects of family violence in their environment.<sup>87</sup> Filicides (where a custodial or non-custodial parent or step-parent kills a child) are the second most common form of family violence homicide following intimate partner homicide.<sup>88</sup>

Family violence negatively and cumulatively impacts children’s physical, neurological and emotional development; their sense of security and attachment in relationships; their mental health and cognitive and behavioural functioning; and their ability to cope and adapt to different situations and contexts.<sup>89</sup> There is also an association between the perpetration of family violence during pregnancy and the transmission of stress hormones to the foetus, which can result in miscarriage, low birth weight and other poor health outcomes for infants.<sup>90</sup>

Children growing up in environments where family violence occurs may also be more likely to require additional support to meet milestones, regulate their emotions and behaviours, engage in education and sustain positive relationships with others.<sup>91</sup> Related to this is the significant impact of family violence on the development of positive attachment and bonds between children and their parents/carers.<sup>92</sup> Children can be incredibly resilient, however, the impacts of family violence can potentially have long-term consequences for friendships and relationships, as well as participation in social and civic life.<sup>93</sup> Experiencing family violence as a child can also potentially contribute to using or experiencing family violence later in life.<sup>94</sup>

Parents/carers, who are often the adult victim-survivor of family violence, may experience intentional attacks by the perpetrator on their parenting capacity and relationships with their children, causing the

<sup>85</sup> VicHealth. 2004. *The health costs of violence: Measuring the burden of disease caused by intimate partner violence*. State Government of Victoria.

<sup>86</sup> Brain Injury Australia. 2018. The prevalence of acquired brain injury among victims and perpetrators of family violence. Retrieved 20 January 2020. < <https://www.braininjuryaustralia.org.au/wp-content/uploads/BRAININJURYAUSTRALIAfamilyviolencebraininjuryFINAL.pdf>>

<sup>87</sup> Department of Human Services. 2014. *Working with families where an adult is violent: Best interests case practice model, Specialist practice resource*. Melbourne: State of Victoria. pp. 10-11.

<sup>88</sup> Australian Institute of Health and Welfare. 2019. op. cit. p.51.

<sup>89</sup> Family Safety Victoria. 2019. *MARAM Practice Guides: Responsibility 2: Identification of Family Violence Risk*. Melbourne: State of Victoria. Appendix 1; Australian Childhood Foundation. 2013. *Safe and Secure: A trauma informed practice framework for understanding and responding to children and young people affected by family violence*. Melbourne: Eastern Metropolitan Region Family Violence Partnership; Holt, S., Buckley, H., & Whelan, S. 2008. The impact of exposure to domestic violence on children and young people: A review of the literature. *Child Abuse & Neglect*, 32, 797-810.

<sup>90</sup> Bunston, W. and Sketchley, R. 2012. *Refuge for babies in crisis: How crisis accommodation services can assist infants and their mothers affected by family violence*. Victoria, Australia: Royal Children’s Hospital Integrated Mental Health Program.

<sup>91</sup> Australian Childhood Foundation. 2013. *Safe and Secure: A trauma informed practice framework for understanding and responding to children and young people affected by family violence*. Melbourne: Eastern Metropolitan Region Family Violence Partnership. Holt, S., Buckley, H., & Whelan, S. 2008. op. cit.; Taylor, A. 2019. *Impact of the experience of domestic and family violence on children – what does the literature have to say?* Queensland, Australia: QCDFVR. Taylor, A. (2019).

<sup>92</sup> Campo, M. (2015). *Children’s exposure to domestic and family violence: Key issues and responses*. Melbourne: AIFS.

<sup>93</sup> Kaspiw, R., Horsfall, B., Qu, L., Nicholson, J. M., Humphreys, C., Diemer, K., Dunstan, J. 2017. *Domestic and family violence and parenting: Mixed method insights into impact and support needs: Final report*. Sydney: ANROWS.

<sup>94</sup> State of Victoria. 2016. op. cit. Chapter 10, p.111.

victim-survivor’s parenting role to become primarily focused on mitigating the impacts of the perpetrator’s behaviour.<sup>95</sup> This can be exacerbated when statutory systems, such as child protection or courts, place expectations on victim-survivors to act ‘protectively’ and manage their children’s safety, while there is little or no intervention or consequence for the perpetrator.<sup>96</sup>

Importantly, evidence shows that children’s recovery from trauma and their ongoing safety and wellbeing is greatly supported by restoring attachment and security with their non-violent parents/carers.<sup>97</sup> At the same time, the relationships children have with parents who are perpetrating violence can vary but they are often characterised by fear and unpredictability, leaving children feeling confused and ambivalent about the relationship.<sup>98</sup> There is a growing evidence base, however, describing children and young people’s perspectives on the impacts of family violence, including their desire for perpetrators to be made more accountable.<sup>99</sup> This evidence highlights the importance of decisions made in the Family Court prioritising the safety of children over a relationship with a parent who is perpetrating violence.

### g. Grandparents as carers

Any issues arising for grandparent carers in family law matters and family law court proceedings.

DV Vic is supportive of changes to the *Family Law Act* that better reflect the diversity of families in Australia and particularly, changes that are responsive to the needs of Aboriginal and Torres Strait Islander and culturally diverse communities. It is essential that representatives from different communities are consulted to ensure that changes are responsive and respectful of their needs and encompass a diversity of family structures.

Domestic Violence Victoria supports recommendation nine of the ALRC review into the family law system that proposes amending the Family Law Act “to provide a definition of ‘member of the family’ that is inclusive of any Aboriginal or Torres Strait Islander concept of family”<sup>100</sup>. It is critical that in the development of a new definition, the consultation process incorporates “the perspective of Aboriginal and Torres Strait Islander communities, organisations, and peak bodies with relevant expertise to reflect the diversity of Aboriginal and Torres Strait Islander families, cultures and contemporary experiences across Australia”<sup>101</sup>.

### h. Core competencies for family law professionals

Any further avenues to improve the performance and monitoring of professionals involved in family law proceedings and the resolution of disputes, including agencies, family law practitioners, family law experts and report writers, the staff and judicial officers of the courts, and family dispute resolution practitioners.

<sup>95</sup> Department of Human Services. 2014. op. cit. p.19; Morris, A., Humphreys, C., & Hegarty, K. (2015). Children’s view of safety and adversity when living with domestic violence. In N. Stanley & C. Humphreys (Eds.), *Domestic violence and protecting children: New thinking and approaches*. London, UK: Jessica Kingsley Publishers.

<sup>96</sup> Department of Human Services. 2014. op. cit. p.18.

<sup>97</sup> Ibid.

<sup>98</sup> Mandel, D. & Rankin, H. 2018. *Working with Men as Parents: Becoming Father-Inclusive to Improve Child Welfare Outcomes in Domestic Violence Cases*. Ohio, USA: Safe & Together Institute.

<sup>99</sup> Lamb, K., Humphreys, C., & Hegarty, K. 2018. *Your behaviour has consequences: Children and young people’s perspectives on reparation with their fathers after domestic violence*. *Children and Youth Services Review*. 2018 May; 88: 164-169.

<sup>100</sup> ALRC. 2019. op. cit. p16

<sup>101</sup> Ibid. pp184-185

The system must strive at every angle to protect women and children, and not collude with the perpetration of further family violence and its effects. We contend that the risk to victim-survivors of not doing so, far outweighs any additional resources that may be required to implement a comprehensive family violence training and professional development program.

As previously discussed, given the centrality of family violence in the family law system, it is vital that all professionals working in that system have a comprehensive and contemporary understanding of family violence to ensure that decisions made prioritise the safety of victim-survivors. The ALRC review noted that national mandatory family violence training has been a recommendation in 8 of the 11 inquiries conducted into the family law system between 2001–2017<sup>102</sup>.

A lack of knowledge and understanding of family violence, risk and trauma results in well-intentioned professionals involved in family law proceedings practicing in a way and making decisions, that may place victim-survivors at increased risk of harm and jeopardise their safety. This could include:

- inadvertently discouraging disclosure of family violence and help seeking by minimising family violence or conveying attitudes of disbelief or hostility;
- increase risk for victim-survivors through colluding with perpetrators and condoning violent behaviour;
- perpetuate and facilitate systems abuse by perpetrators (discussed above);
- poor judgements based on uninformed and discriminatory worldviews, making decisions which result in children continuing to experience and/or be exposed to family violence.

As previously noted, we believe one of the underpinning principles of reform of the family law system must be the application of a *family violence lens* which is dependent on the family law system, and all professionals working within that system having a contemporary and evidence-based understanding of the prevalence, nature and dynamics of family violence, of risk and best-practice responses.

Family violence must be identified, and risk assessments undertaken from the moment a victim-survivor enters the family law system and throughout proceedings, and these must be undertaken by practitioners with expertise in family violence. Case managers who undertake these assessments would also be well-placed to assess other needs a person may have and if working collaboratively with legal support services, provide a holistic response to victim-survivors of family violence rather than the siloed response they too often receive.

Experts from the specialist family violence response sector must be involved in the development of training for family law professionals so that it is contemporary and current, and the focus must be on the quality and content of the training rather than the number of people who have attended the sessions. The following content should be included:

- the nature and dynamics of family violence;
- trauma- informed practice;
- cultural competency and safety (working with Aboriginal and Torres Strait Islander people and people from CALD backgrounds);

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<sup>102</sup> Ibid, p111

- working with people who identify as LGBTIQ;
- disability awareness and accessibility;
- intersectionality of clients' needs that includes recognition of structural inequalities arising from the interconnectedness of gender, age, sexuality, disability, culture, religion, race and/or other experiences;
- the intersection of family law, child protection, migration status and family violence;
- the intersection of family violence and family law in property determinations that includes:
  - the financial impacts of family violence
  - the nature and impacts of economic abuse;<sup>103</sup>
- working with interpreters
- working with men who use family violence – understanding gendered drivers of men's family violence, perpetrator patterns of behaviour and intentional use of family violence and work practices that avoid collusion.

We reiterate that we endorse WLSA's Safety First in Family Law plan and particularly Step 3 to ensure family law professionals (including family report writers and children's contact services) have a real understanding of family violence<sup>104</sup>. We also support Recommendations 51-54 in the ALRC Report on the proviso that the development of family violence training is informed by organisations with specialist family violence expertise and is mandatory for all professional working in the family law system. This training would not only ensure consistency of responses to family violence across jurisdictions and safer outcomes for victim-survivors but would also help mitigate against vicarious trauma experienced by professionals working in this area.

### i. Interaction between the family law and the child support system

Any improvements to the interaction between the family law system and the child support system.

We refer the Committee to the Council of Single Mothers and their Children (CSMC) submission to the ALRC Review of the family law system which details extensive evidence on the interaction between the family law system and the child support system<sup>105</sup>.

We also refer the Committee to a recent report by the National Council of Single Mothers and their Children and Swinburne University<sup>106</sup> which explores mothers' experiences of the Child Support System. The findings of this report include:

- The national child support debt of \$1.59 billion severely harms families.
- In a context where 17 per cent of Australian children under five years of age live in poverty the payment of child support is paramount.
- Non-payment can result in financial and economic insecurity for the mothers, have health implications for children and reduce safety options.

<sup>103</sup> Smallwood, E. 2015. op. cit.

<sup>104</sup> WLSV. 2019. op. cit.

<sup>105</sup> National Council of Single Mothers and their children. 2018. *Submission to the Australian Law Reform Commission Family Law System Review 2018*. <<https://www.csmc.org.au/wp-content/uploads/2018/05/CSMC-Family-Law-System-Review.pdf>>

<sup>106</sup> Cook, Kay, Zoë Goodall, Juanita McLaren and Terese Edwards. 2019. *Debts and Disappointment: Mothers' Experiences of the Child Support System*. Melbourne: Swinburne University of Technology <<https://apo.org.au/sites/default/files/resource-files/2019/12/apo-nid268591-1400911.pdf>>

- “Loopholes” used by the paying parent produced financial distress, control and/or economic abuse.
- The DHS-CS is ill-equipped to handle family violence and controlling behaviours and struggles to identify that non-payment of child support is a form of control and abuse.
- If violent ex-partners are exempt from paying child support, it is a form of systems abuse that financially awards the violent ex-partner by not requiring him to contribute to his child’s upbringing.

It is essential that the interaction between the family law system and the child support system be considered in this context and particularly that non-payment of child support can constitute financial abuse and be used as an avenue through which systems abuse can be perpetrated. Further, it is important to see the child support system as one of many systems that a victim-survivor may be required to interact with and reform should aim to reduce fragmentation between the child support system and other systems/jurisdictions to enhance the safety of victim-survivors.

#### j. Pre-nuptial agreements

The potential usage of prenuptial agreements and their enforceability to minimise future property disputes

As DV Vic does not have expertise in this area, we will not be providing comment in relation to this matter.

#### k. Related matters

##### Access to and Training for Interpreters

Access to interpreters who are qualified and have a strong understanding of the nature and dynamics of family violence and technical legal language is critical to ensuring access to justice for victim-survivors from culturally and linguistically diverse backgrounds. As noted in our previous submission to the ALRC review, for these survivors, language is just one barrier to accessing the service system. Gender norms, stigma, fear of being cut off from their community and visa issues can all be barriers to disclosing family violence and navigating the court system<sup>107</sup>.

At present, not all interpreters are trained in family violence or able to navigate these complex issues. This can lead to communication breakdowns and in some cases, interpreters from local communities may reinforce attitudes that prevent the woman from pursuing a family law matter. Further, it can “affect not only the family’s understanding of their legal options, but also the information that is provided to the Court when matters are heard”<sup>108</sup>.

We support the Judicial Council on Cultural Diversity (JCCD) *Recommended National Standards for Working with Interpreters in Courts and Tribunals*<sup>109</sup> and submit that these should be embedded in the family law system and included in the *Family Violence Best Practice Principles for the Federal Circuit*

<sup>107</sup> Intouch & Good Shepherd. 2018. The practice of dowry and the incidence of dowry abuse in Australia. Submission to the Senate Standing Committee on legal and Constitutional Affairs; National Advisory Group.2018; Segrave, M. 2017. Temporary migration and family violence: An analysis of victimisation, vulnerability and support. Melbourne: School of Social Sciences, Monash University. Accessed 5 November 2018, <https://arts.monash.edu/gender-and-family-violence/projects/temporary-migration-and-family-violence/>.

<sup>108</sup> House of Representatives Standing Committee on Social Policy and Legal Affairs. 2017. op. cit. p234.

<sup>109</sup> Judicial College on Cultural Diversity. 2017. *Recommended National Standards for Working with Interpreters in Courts and Tribunals*. Retrieved 28 January 2020 <<https://jccd.org.au/wp-content/uploads/2018/02/JCCD-Interpreter-Standards.pdf>>

*Court and Family Court of Australia* to promote consistent practice<sup>110</sup>. DV Vic supports recommendation 160 of the Royal Commission into Family Violence to ensure interpreters are qualified and that interpreter courses must require an understanding of the nature and dynamics of family violence<sup>111</sup>.

As noted in the Domestic and Family Violence Benchbook, in matters where family violence is an issue, particular attention needs to be paid to ensure that:

- Family members and children are not used as interpreters;
- Separate interpreters are booked for each party;
- Concerns around confidentiality in small language groups where the interpreter may be known to the family must be a consideration prior to booking an interpreter as this will have implications for the victim-survivors safety;
- The *choice* to have a female interpreter must be explicit in court booking processes.

### **Communications privilege for confidential counselling records**

Sharing of confidential counselling and case notes can place survivors of violence including children at greater and ongoing risk of harm from perpetrators of family violence, while simultaneously damaging the relationship between the support service (for example, the specialist family violence service) and the survivor of violence at a time when it is vital to them.

Seeking counselling records exposes survivors of family violence to further trauma and may deter them from seeking psychosocial support<sup>112</sup>. The majority of SFVS in Victoria have a policy of contesting subpoenas for confidential case notes and are often successful. However, the process of challenging the subpoenas is expensive and time consuming, taking resources away from frontline support to survivors of family violence. Therefore, DV Vic recommends that all confidential counselling records related to family violence and sexual assault be subject to absolute privilege. The precedent for this has already been established in relation to sexual assault counselling records at the state level –Tasmania has established absolute privilege and other states have established qualified privilege - leaving the Commonwealth jurisdiction as the only one that does not have any form of communications privilege in relation to gender-based violence against women<sup>113</sup>.

### **Physical design and signposting**

Numerous suggestions have been made previously advising on the establishment of simplified, inclusive and accessible information and signposting for people from diverse communities entering the family law system, including the use of new and emerging technology solutions and more frequent use of video-conferencing particularly for victim-survivors of family violence at risk and/or in regional, rural and remote settings where access to information and resources are fewer.

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<sup>110</sup> Family and Federal Circuit Court of Australia. 2016. *Family Violence Best Practice Principles for the Federal Circuit Court and Family Court of Australia*. retrieved 28 January 2020 < <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/family-violence/family-violence-best-practice-principles/>>.

<sup>111</sup> State of Victoria, Royal Commission into Family Violence: Summary and recommendations, Parl Paper No 132 (2014–16).

<sup>112</sup> Rights Advocacy Project. 2018. Protecting survivors' most sensitive information: A sexual assault counselling privilege for family law, Liberty Victoria, Melbourne.

<sup>113</sup> *ibid*

Careful attention and investment must also be given to improving access to materials in plain English as well as other languages, and interpreters and translators (for both verbal and written translation) for people from Aboriginal and Torres Strait islander communities, CALD communities and those with a visual or hearing impairments to access throughout their journey through the family law system, putting in place systems that avoid further traumatisation, financial burden and delays for women experiencing family violence who are members of these communities.

Similarly, there are plentiful arguments and evidence that suggests improvements to the physical environment of the family court related to family violence, including:

- Separate entrances for survivors and perpetrators of family violence.
- Safe waiting areas.
- Family violence and trauma-informed security personnel in public spaces, including outside the court.
- Child-friendly spaces.
- Sufficient and reliable remote witness facilities.
- Community-based and less intimidating physical appearance.
- Signs in multiple languages.
- Discrimination against higher risk and/or marginalised groups.